

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT J. DIMLER,

Plaintiff,

v.

Case No: 8:20-mc-55-T-30JSS

PRESTIGE CHRYSLER JEEP DODGE
LLC and CHRYSLER CAPITAL AUTO
FINANCIAL,

Defendants.

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REPORT AND RECOMMENDATION

THIS MATTER is before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), which the Court construes as a Motion for Leave to Proceed *in Forma Pauperis*. (Dkt. 1.) Upon consideration, it is recommended that Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* be denied without prejudice and Plaintiff's case be dismissed without prejudice.

Pursuant to 28 U.S.C. § 1915, the Court may, upon a finding of indigency, authorize the commencement of an action without requiring the prepayment of fees or security. 28 U.S.C. § 1915(a)(1). However, when an application to proceed *in forma pauperis* is filed, the Court must review the case and dismiss it *sua sponte* if the Court determines that the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Upon review of Plaintiff's Motion for Leave to Proceed *in Forma Pauperis*, it appears that Plaintiff is financially eligible to proceed *in forma pauperis* in this case. However, Plaintiff has not filed a complaint and therefore fails to state a claim that complies with the pleading

requirements of Federal Rules of Civil Procedure 7 and 10. (Dkt. 1.) Under Federal Rule of Civil Procedure 7, the only pleadings allowed are a (1) a complaint, (2) an answer to a complaint, (3) an answer to a counterclaim designated as a counterclaim, (4) an answer to a cross claim, (5) a third-party complaint, (6) an answer to a third-party complaint, and (7) if the court orders one, a reply to an answer. Fed. R. Civ. P. 7(a). Under Federal Rule of Civil Procedure 10, every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. Fed. R. Civ. P. 10(a). Further, a party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. Fed. R. Civ. P. 10(b).

Although pleadings drafted by pro se litigants are liberally construed, *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998), they must still “conform to procedural rules,” *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002). Plaintiff's Motion for Leave to Proceed in Forma Pauperis does not include any statement of the nature of Plaintiff's action and is not sufficient under Rule 7 or Rule 10. Plaintiff therefore fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B).

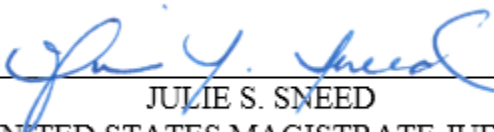
Accordingly, it is

RECOMMENDED:

1. Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* (Dkt. 1) be **DENIED** without prejudice.
2. Plaintiff's case be **DISMISSED** without prejudice and with leave to file a complaint that complies with the Federal Rules of Civil Procedure. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (“Generally, where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.”) (internal

quotation and citation omitted). The undersigned recommends that the complaint, if any, be due within twenty (20) days of the date this Report and Recommendation becomes final.

IT IS SO REPORTED in Tampa, Florida, on July 10, 2020.



JULIE S. SNEED
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Copies furnished to:
The Honorable James S. Moody, Jr.
Unrepresented Party